VZCZCXYZ0021
RR RUEHWEB

DE RUEHBO #6535/01 2501929
ZNR UUUUU ZZH
R 071929Z SEP 07
FM AMEMBASSY BOGOTA
TO RUEHC/SECSTATE WASHDC 8619
INFO RUEHBR/AMEMBASSY BRASILIA 7732
RUEHCV/AMEMBASSY CARACAS 9293
RUEHLP/AMEMBASSY LA PAZ SEP LIMA 5370
RUEHZP/AMEMBASSY PANAMA 0606
RUEHQT/AMEMBASSY QUITO 5971
RUEAIIA/CIA WASHDC
RUEKJCS/SECDEF WASHDC

UNCLAS BOGOTA 006535

SIPDIS

SIPDIS

E.O. 12958: N/A
TAGS: PTER PGOV PREL ECON SOCI CO
SUBJECT: GOC CONSULTATIONS WITH INDIGENOUS AND AFRO-COLOMBIAN GROUPS

REF: BOGOTA 2553

Summary

¶1. The GOC must consult with indigenous and Afro-Colombian groups about actions that affect them pursuant to international treaties, the Colombian Constitution, laws, and court decisions. The GOC conducts 50-75 consultations per year, 80 percent with indigenous groups and 20 percent with Afro-Colombian groups. Most consultations are part of a broader environmental permit process. Some GOC activities, such as the eradication of illicit crops, require consultations. Others, such as military operations, do not. Indigenous groups complain a lack of clear guidelines means developers sometimes "steamroll" communities in the consultations process. End Summary

---
A Patchwork of Government Obligations

¶2. The GOC must consult ("consulta previa") beforehand with indigenous and Afro-Colombian groups about GOC actions that could affect them. This obligation derives from International Labor Organization (ILO) Convention 169 on the rights of indigenous peoples, Colombia's Constitution, laws on indigenous and Afro-Colombian groups, Constitutional Court decisions, and administrative decrees. The ILO Convention only applies to indigenous groups and requires the GOC to hold "open, frank and meaningful" discussions on activities affecting them. The Constitution generally requires the GOC "to engage the participation" of any citizen affected by its decisions, and specifically requires consultations where the exploitation of natural resources has an impact on indigenous groups. Law 99 of 1993 extends the natural resource consultation requirement to Afro-Colombian groups.

¶3. In 1998 the Ministry of the Interior (MOI) issued Decree 1320 to standardize the consultation process for exploitation of resources in indigenous "resguardos" (which cover close to 31 million hectares or approximately one third of Colombia, for the 1.4 million indigenous citizens) and Afro-Colombian communal territories (which cover 4.7 million hectares, or about five percent of the country, for the 4.3 million Afro-Colombian citizens). Under the Constitution, the GOC owns all subsurface resources, including those under resguardos and communal territories. The GOC can directly exploit the resources or contract with a private developer to

do so. The Decree requires that a project's "economic, environmental, social and cultural impacts" be discussed with affected indigenous and Afro-Colombian communities prior to exploitation as part of an environmental permit process.

¶4. The consultation requirement, especially where the government allows private parties to exploit natural resources, is a source of controversy. Anthropologist Constanza Ussa said many communities think the process gives them a veto over projects. In fact, consultations do not give indigenous or Afro-Colombian groups such power, requiring only that the developer hear the communities' ideas on mitigation or compensation. This misperception creates friction and means part of Ussa's job is educating communities on legal requirements for consultations.

Types of Consulta Previas

¶5. There are typically 50-75 consultas previas per year according to Sorelly Paredes, director of the MOI's Indigenous Affairs office. 80 percent are with indigenous groups and 20 percent with Afro-Colombians. Paredes said consultations with indigenous groups are generally more successful because the indigenous are better organized. Pastor Murillo, director of the MOI's Afro-Colombian Affairs office, agreed consultations with Afro-Colombians can be difficult because their organizational structures are often weak. Murillo said the poorly defined boundaries of Afro-Colombian communal territories also create doubts about whether projects affect Afro-Colombian communities (reftel).

¶6. 70 percent of all consultations involve obtaining an environmental permit from the Ministry of the Environment, Housing and Territorial Development (MOE). Environmental permits are required for projects with significant environmental impacts, usually hydrocarbon exploration or extraction. The MOI advises the MOE whether a project is in a resguardo or communal territory, or within 5 kilometers of one. If so, the project developer must hire consultants to evaluate impacts, develop alternatives, and consult with affected communities. Developers are required to compensate affected communities for damage caused by the project. The MOI's Indigenous Affairs office or Afro-Colombian office usually acts as the community's advocate in the consultations.

¶7. The MOI coordinates consultations for projects where environmental permits are not required, typically government construction of roads or military bases. These represent 20 percent of all consultations. Usually such projects are outside a resguardo or communal territory, but have the potential to affect the community. The MOI analyzes project impacts and options, but the GOC is not required to compensate affected communities. Still, given the "political cost" of government projects opposed by local communities, Paredes said the GOC usually tries to placate communities by adding infrastructure projects that they want.

¶8. Finally, about ten percent of consultations involve GOC eradication of illegal crops in indigenous or Afro-Colombian areas. In 2003, the Constitutional Court ruled the GOC must consult with indigenous communities before eradicating illicit crops within resguardos. The MOI acts as an intermediary between the community and the GOC. It advises the community that illicit crops are growing within their resguardo, and lets them decide if the crops will be eradicated manually or by aerial eradication. If the community chooses manual eradication, it can do the eradication (monitored by the GOC) or let the GOC do it.

Issues in the Consultation Process

¶9. Ministry of Defense (MOD) Directive 16 of 2006 states

that public forces should contact indigenous authorities before entering their resguardo, "unless" security concerns militate otherwise. Paredes said the authority of the GOC to enter resguardos and communal territories derives from the GOC's constitutional right to preserve security and national integrity. A parallel MOD Directive for Afro-Colombian communities (Directive 7 of 2007) lacks the provision that public forces should contact community authorities before operations. Still, the Directive says public forces should preserve the integrity of territorial communities and respect the human rights of the inhabitants. Murillo said Directive 7 does not require public forces to contact Afro-Colombian authorities because communal territories have fewer legal rights than resguardos.

¶10. Ussa said there are inherent conflicts in the consultation process. Experts who evaluate projects impacts are often paid by the project developers. Ussa thinks it would be better to have an independent body of experts employed by the GOC assist communities in the process. She said the MOI's role as a community advocate is also problematic as the GOC is often involved in the project. In the case of gas and oil projects, the salaries of MOI community advocates are paid by GOC-owned oil and gas companies. Paredes conceded having the interests of indigenous and Afro-Colombian groups represented by people paid by project developers is a "delicate issue," but insisted the groups trusted the MOI to represent them fairly.

¶11. Ussa said Decree 1320 creates more problems than it solves. She said that because the decree lacks clear guidelines, it makes it easier for project developers to "steamroll" communities. Hired experts turn out "quickie" analyses, community meetings are set-up on short notice, and communities often do not understand what they are agreeing to. Indigenous congresswoman Orsinia Polanco echoed this complaint. Polanco's staff claimed consulta previas often consist of project developers inviting communities to a

picnic, asking them to sign a receipt for food and drink, and then later showing the signed documents as proof that consultation took place. Indigenous groups sometimes claim developers mislead communities about projects, provide inadequate compensation, and bribe community leaders to sign-off on projects.
Brownfield